

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 JUAN RAMIREZ,

8 Plaintiff,

9 v.

10 COUNTRY MUTUAL INSURANCE
11 COMPANY, an Illinois company,

12 Defendant.

NO: 2:16-CV-0281-TOR

ORDER GRANTING MOTION FOR
PROTECTIVE ORDER

13 BEFORE THE COURT are Defendant Country Mutual Insurance
14 Company's Motion for Protective Order (ECF No. 33) and corresponding Motion
15 to Expedite (ECF No. 38). The motions were submitted for consideration without
16 oral argument. The Court has reviewed the file and the records therein, and is fully
17 informed.

18 Defendant requests the Court enter a Protective Order to change the location
19 of depositions to where the witnesses reside. ECF No. 33 at 2. According to
20 Defendant:

1 Plaintiff has set the depositions of Country's employees Christopher
2 Thielbar and Jim Lefebvre to take place in Wenatchee, Washington on
3 December 14, 2017. Mr. Thielbar is employed as a Senior Special
4 Investigator for Country Mutual, he resides in Graham, Washington, and his
5 primary work location is out of his residence in Graham, Washington. *See*
Declaration of Chris Thielbar. Mr. Lefebvre is a Senior Claims
Representative for Country Mutual, he resides in West Seattle, and his
primary work location is in Federal Way, Washington. *See* Declaration of
Jim Lefebvre.

6 ECF No. 33 at 2.

7 Plaintiff opposes the Motion for Protective Order. ECF No. 39. Plaintiff
8 first argues that state procedural rules should apply. Plaintiff then argues that the
9 deponents are speaking agents of Defendant and thus fit within the broad category
10 of "officers, directors, or managing agents" making them parties to this suit. ECF
11 No. 39 at 2-9. Plaintiff concedes the deposition of a corporate party ordinarily
12 should take place at its place of business (Illinois), but then argues, because of
13 financial hardship and disparity in financial resources, the Court should order the
14 depositions to take place in Chelan County where Defendant conducts business.
15 ECF No. 39 at 8-9.

16 "Under the *Erie* doctrine, federal courts sitting in diversity apply state
17 substantive law and federal procedural law." *In re Cty. of Orange*, 784 F.3d 520,
18 523–24 (9th Cir. 2015) (quoting *Gasperini v. Ctr. For Humanities, Inc.*, 518 U.S.
19 415, 427 (1996)). Thus, the Federal Rules of Civil Procedure apply here. Rule 45
20 sets the geographical limits on the place of compliance for a deposition

1 subpoena—“A subpoena may command a person to attend a . . . deposition only as
2 follows: (A) within 100 miles of where the person resides, is employed, or
3 regularly transacts business in person; or (B) within the state where the person
4 resides, is employed, or regularly transacts business in person, if the person (i) is a
5 party or a party’s officer. . . .” Fed. R. Civ. P. 45(c). Rule 45 also provides that
6 upon motion, “the court for the district where compliance is required must quash or
7 modify a subpoena that . . . requires a person to comply beyond the geographical
8 limits specified in Rule 45(c)” Fed. R. Civ. P. 45(d)(3)(A)(ii).

9 The deponents are not parties nor are they officers [directors or managing
10 agents] of Country Mutual, they are lower level employees. *See* Rule 45(c) and
11 Advisory Committee Notes, 2013 Amendment. The Rule does not differentiate
12 between speaking and non-speaking agents. The 2013 Amendment to Rule 45(c)
13 resolved “a split in interpreting Rule 45’s provisions for subpoenaing parties and
14 party officers.” Advisory Committee Notes, 2013. While nonparty witnesses
15 require the use of a subpoena to compel their attendance, parties, officers, directors
16 and managing agents need not involve use of a subpoena.

17 As such, these deponents may only be required to attend a deposition within
18 100 miles of where they reside, are employed or regularly transact business in
19 person. Wenatchee is not within 100 miles of any of these locations, however,
20 Tacoma is within 100 miles.

1 Pursuant to Rule 29, the parties “may stipulate that a deposition may be
2 taken before any person [or] at any time or place....” Fed. R. Civ. P. 29(a).

3 **ACCORDINGLY, IT IS HEREBY ORDERED:**

4 1. Defendant’s Motion for Protective Order (ECF No. 33) is **GRANTED**.

5 Plaintiff is hereby ordered to conduct the depositions of Chris Thielbar
6 and Jim Lefebvre in Tacoma, Washington, absent further stipulation
7 between the parties.

8 2. Defendant’s Motion to Expedite (ECF No. 38) is **GRANTED**.

9 The District Court Executive is directed to enter this Order and furnish
10 copies to the parties.

11 **DATED** November 27, 2017.



15
16
17
18
19
20

A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
Chief United States District Judge